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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,543	01/08/2004	Howard E. Huber JR.	509/40513	5136

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BARNES & THORNBURG
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WASHINGTON, DC 20006-4607

EXAMINER

KING, BRADLEY T

ART UNIT PAPER NUMBER

3683

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/752,543	Applicant(s) HUBER ET AL.	
	Examiner Bradley T. King	Art Unit 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 25-31 and 33-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 19-24, 32 and 35-40 is/are rejected.
- 7) ☒ Claim(s) 11-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Species I in the reply filed on 7/18/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 25-31 and 33-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/18/2005.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites "clevis-type". It is not clear what the addition of the word "type" is intended to convey.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 19-24, 32 and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber (US# 6431329).

Huber discloses an actuator including; a cylinder 101; a pressure piston 104 carried inside the cylinder; a shaft 104; a rod 103 connected to the pressure piston, and the rod, a first port configured 141 to receive a fluid pressure to move the pressure piston to a first position; and a locking mechanism 110, the locking mechanism including a first surface and a second surface, and the surfaces locking the pressure piston in the first position upon removal of the fluid pressure at the first port. Huber lack the locking device being inside the piston and moving along the shaft. Huber instead shows the opposite arrangement where the shaft is fixed to the piston and the locking elements are fixed to the cylinder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to reversal the shaft locking arrangement of Huber such that the shaft 104 is fixed to the cylinder and the locking arrangement is carried by the piston as an obvious design alternative and functional equivalent. Also note *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955) regarding the obviousness of reversing parts.

Regarding claim 19, note spring 117.

Regarding claim 20, note thrust bearing 109.

Regarding claim 24, note clevis type mounting 76 or the mounting opposite of 76.

Allowable Subject Matter

Claims 11-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to disclose the details of the movable or venting element located inside the piston.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huber (2673624), Greer, Huber (6698552) Connel and Ivan et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley T. King whose telephone number is (571) 272-7117. The examiner can normally be reached on 11:00-7:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571) 272-6786. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BTK

Bradley King 1/9/06
**BRADLEY KING
PATENT EXAMINER**